

REMARKS

Claims 1 to 17 are now pending and being considered in the present application.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicant thanks the Examiner for acknowledging the claim for foreign priority and for indicating that all certified copies of the priority documents have been received.

Claims 1 to 10 and 12 to 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,086,385 (“Launey”).

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'l. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

The “Launey” reference refers to a system for automatically controlling a plurality of remotely controllable subsystems within a house, in which a home automation control system allows the user to control home subsystems or appliances in which electronic means are utilized by the user (col. 2, line 66, to col. 3, line 2). The system referred to by the “Launey” reference includes a central processor on which a standardized modular software program called HEART runs (col. 4, lines 34 to 37). The HEART software includes various modules

like a polling loop and tasks (col. 4, lines 51 to 54). These software modules interact with intelligent secondary processors (col. 4, lines 55 to 57), which are used to relay information to the central processor or to translate central processor commands into commands that their dedicated devices can understand (col. 4, lines 38 to 42). It is essential that the interaction take place during runtime of the HEART software. For example, the module Interrupt Handler, being a portion of the HEART instructions, operates in the background, and therefore during runtime of the HEART software, so as to receive messages from the secondary processors and to build queues accordingly (col. 24, lines 46 to 49).

In stark contrast, the execution of the computer program of the presently claimed subject matter is controlled by a preliminary action that is performed before the actual execution of the computer program. The preliminary action has a decisive influence on the subsequent execution of the computer program, thus permitting control of the execution of the computer program. The “Launey” reference does not even refer to taking any kind of preliminary action to influence the subsequent execution of the computer program. Thus, the “Launey” reference does not identically disclose (nor even suggest) the features of the presently claimed subject matter as discussed herein.

In particular, claim 1 includes the features of *subdividing the computer program into a plurality of functionally linked functionalities; defining possible operating states for the functionalities; defining possible system states of the system; allocating specifiable operating states to the functionalities for each system state; ascertaining dependencies of the functionalities on one another, a first functionality being dependent upon a second functionality if at least one input variable of the first functionality is ascertained in the second functionality; and centrally specifying the operating states required for a certain system state, taking into consideration the ascertained dependencies among the functionalities and further boundary conditions.*

First, the “Launey” reference does not identically disclose (nor even suggest) the feature of *subdividing the computer program into a plurality of functionally linked functionalities*. Even if it is assumed that the tasks referred to by the “Launey” reference correspond to the claimed *functionalities* (which is not conceded for purposes of this response), the tasks referred to by the “Launey” reference are not *functionally linked*. Therefore, the tasks referred to by the “Launey” reference do not identically disclose (or even

suggest) the feature of *subdividing the computer program into a plurality of functionally linked functionalities*, as provided for in the context of the presently claimed subject matter.

Second, the “Launey” reference does not identically disclose (nor even suggest) the feature of *defining possible operating states for the functionalities*. Even if the “Launey” reference did refer to subtasks, they are only the result of a subdivision of the tasks and do not correspond to *operating states* for the tasks, as provided for in the context of the presently claimed subject matter.

Third, the “Launey” reference does not identically disclose (nor even suggest) the feature of *defining possible system states of the system*. In particular, the states of the tasks referred to by the “Launey” reference do not correspond to *system states of the system*. Instead, the states of the tasks referred to by the “Launey” reference only correspond to particular tasks and represent states of a part of the software. For example, the states mentioned in col. 28, lines 25 to 31, of the “Launey” reference concern a subdivision of the subtasks, and therefore represent states of a part of the software – but not states of the system. The states mentioned in col. 29, line 10, of the “Launey” reference are states of the tasks and represent states of a part of the software. The states mentioned in col. 29, lines 11 to 13, of the “Launey” reference represent states of the software. In particular, none of the states mentioned by the “Launey” reference identically disclose (or even suggest) the feature of *defining possible system states of the system*, as provided for in the context of the presently claimed subject matter.

Fourth, the “Launey” reference does not identically disclose (nor even suggest) the feature of *allocating specifiable operating states to the functionalities for each system state*. No combination of the tasks, subtasks, and states of tasks of the “Launey” reference identically discloses (or even suggests) the features of *defining possible operating states for the functionalities, defining possible system states of the system, and allocating specifiable operating states to the functionalities for each system state*. In particular, the “Launey” reference does not identically disclose (or even suggest) the feature of *allocating specifiable operating states to the functionalities for each system state*.

Fifth, the “Launey” reference does not identically disclose (nor even suggest) the features of *ascertaining dependencies of the functionalities on one another, a first functionality being dependent upon a second functionality if at least one input variable of the first functionality is ascertained in the second functionality*. As explained above, the

“Launey” reference does not identically disclose (nor even suggest) the feature of *subdividing the computer program into a plurality of functionally linked functionalities*. Further, the “Launey” reference does not identically disclose (nor even suggest) the feature of *ascertaining dependencies of the functionalities on one another*. For example, Figures 5a to 5c clearly show no dependencies among the tasks. Quite the contrary, after the completion of any task, the program returns to the top of the Polling Loop, meaning that there is not even the possibility of any dependencies between the different tasks. Therefore, the “Launey” reference does not identically disclose (nor even suggest) the features of *ascertaining dependencies of the functionalities on one another, a first functionality being dependent upon a second functionality if at least one input variable of the first functionality is ascertained in the second functionality*, as provided for in the context of the presently claimed subject matter.

Sixth, the “Launey” reference does not identically disclose (nor even suggest) the feature of *centrally specifying the operating states required for a certain system state, taking into consideration the ascertained dependencies among the functionalities and further boundary conditions*. The “Launey” reference does not identically disclose (nor even suggest) the feature of *operating states, system states, nor ascertained dependencies among functionalities*. In particular, it does not identically disclose (nor even suggest) the feature of *centrally specifying the operating states required for a certain system state, taking into consideration the ascertained dependencies among the functionalities and further boundary conditions*.

Accordingly, claim 1 is allowable, as are its dependent claims..

Claim 14 and 16 include features like those of claim 1, and are therefore allowable for essentially the same reasons, as are their respective dependent claims 15 and 17.

Claim 11 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the “Launey” reference in view of U.S. Patent No. 5,646,843 (“Gudat”).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This

teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 11 depends from claim 1, and is therefore allowable for essentially the same reasons as claim 1, since the “Gudat” reference does not overcome — and is not asserted to overcome — the critical shortcomings of the “Launey” references as to claim 1.

Further, a person skilled in the art would have no reason for combining the “Launey” reference with the “Gudat” reference. The “Gudat” reference refers to an apparatus and method for controlling a surface-based vehicle. The “Gudat” reference relates to an integrated vehicle positioning and navigation system, providing highly accurate and autonomous positioning and navigation of the vehicle (abstract; col. 4, lines 7 to 14). The “Gudat” reference does not refer to a driving dynamics system according to claim 11 of the presently claimed subject matter. Consequently, as to claim 11, a person skilled in the art would not have combined the “Launey” reference with the “Gudat” reference to control or regulate a system in a vehicle applying the method according to the presently claimed subject matter.

Also, the “Launey” reference does not render claims 1 to 10 and 12 to 17 obvious to a person skilled in the art. The presently claimed subject matter allows structuring and organization of the computer program before the actual execution of the computer program in such a way that the computer program can be executed safely and reliably, in particular in a multitasking capable environment. The computer program usually serves for realizing certain functionalities of a motor vehicle and is executed in a control unit of a motor vehicle.

The home automation control system referred to by the “Launey” reference is intended for use in a home environment, in particular to control or communicate with consumer appliances, and therefore in a completely other technical field than the presently claimed subject matter. In the “Launey” reference, its applications are identified as *residential* applications (col. 12, lines 13 to 15) -- which is not a motor vehicle. Therefore, there would have been no reason for the person skilled in the art to monitor the field of controlling or regulating a driving dynamics system.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Withdrawal of the obviousness rejection is therefore respectfully requested.

In summary, all of pending claims 1 to 17 are allowable.

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CONCLUSION

In view of the foregoing, it is respectfully submitted that all pending and considered claims 1 to 17 are in condition for allowance. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Since all issues raised by the Examiner have been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,

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